

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

NALAYSIA GRAVELY,

Plaintiff,

v.

Civil Action No. 2:25-CV-00255

JOHN DOE 1, JOHN DOE 2,
JOHN DOE 3, etc. individuals employed
as U.S. Marshals, in their individual capacities,

Defendants.

ORDER

On April 17, 2025, the Plaintiff, acting *pro se*, filed an *Application to Proceed Without Prepayment of Fees or Costs* (ECF No. 1), a “*Complaint for Violation of Civil Rights (Bivens Action) Jury Trial Demanded*” (ECF No. 2), and assorted attachments in support of same (ECF Nos. 2-1 – 2-7). By Order entered on May 7, 2025, the undersigned directed the Plaintiff to amend her complaint by May 27, 2025, and to identify each individual she sought to name as a defendant, and significantly, notified the Plaintiff that service of process cannot be effectuated on “John Doe” defendants, because it is the Plaintiff’s responsibility, not the Court’s, to ascertain the identities and addresses of those individuals whom she believes caused her injury. (See ECF No. 7 at 2-3) However, on May 27, 2025, the Plaintiff filed her “Amended Complaint for Violations of Constitutional Rights (Bivens Action)”, seeking relief pursuant to Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 24 L.Ed.2d 619 (1971). (ECF No. 8) Once again, the Plaintiff only provided unnamed “John Doe 1, John Doe 2, John Doe 3, etc.” as the Defendants. (*Id.*) On May 29, 2025, the undersigned again directed the Plaintiff to amend her complaint to *name individual defendants*, to specifically set forth her constitutional claims, and to state specific facts as to how each defendant violated her

constitutional rights” no later than June 27, 2025. (ECF No. 9) (*emphasis* in original) The undersigned once again warned the Plaintiff that failure to amend her complaint by June 27, 2025 will result in a recommendation of dismissal without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure¹ and Rule 41.1 of the Local Rules of Civil Procedure for the Southern District of West Virginia² (*Id.*).

The Plaintiff, however, has not responded to this most recent Court Order, and there is no indication that the Plaintiff did not receive it. Accordingly, the undersigned has determined that the Plaintiff has failed to take any steps to prosecute this action, and therefore, the Plaintiff’s above action should be dismissed.

Analysis

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Rule 41.1 of the Local Rules of Civil Procedure for the Southern District of West Virginia, District Courts possess the inherent power to dismiss an action for a *pro se* Plaintiff’s failure to prosecute *sua sponte*. See Link v. Wabash Railroad Co., 370 U.S. 626, 629, 82 S.Ct. 1386, 1388, 8 L.Ed.2d 734 (1962) (“The authority of a federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.”); United States ex. rel. Curnin v. Bald Head

¹ Rule 41(b) of the Federal Rules of Civil Procedure provides:

(b) Involuntary Dismissal: Effect. If the plaintiff fails to prosecute or to comply with these rules or any order of court, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule - - except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 - - operates as an adjudication on the merits.

² Rule 41.1 of the Local Rules provides:

Dismissal of Actions. When it appears in any pending civil action that the principal issues have been adjudicated or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed 30 days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. The clerk shall transmit a copy of any order of dismissal to all counsel and unrepresented parties. This rule does not modify or affect provisions for dismissal of actions under FR CrP P 41 or any other authority.

Island Ltd., 381 Fed.Appx. 286, 287 (4th Cir. 2010)(“A district court has inherent authority to dismiss a case for failure to prosecute, and Rule 41(b) ‘provides an explicit basis for the sanction.’”)(quoting Doyle v. Murray, 938 F.2d 33, 34 (4th Cir. 1991)). Rule 41.1 of the Local Rules provides:

Dismissal of Actions. When it appears in any pending civil action that the principal issues have been adjudicated or have become moot, or that the parties have shown no interest in further prosecution, the judicial officer may give notice to all counsel and unrepresented parties that the action will be dismissed 30 days after the date of the notice unless good cause for its retention on the docket is shown. In the absence of good cause shown within that period of time, the judicial officer may dismiss the action. The clerk shall transmit a copy of any order of dismissal to all counsel and unrepresented parties. This rule does not modify or affect provisions for dismissal of actions under FR Civ P 41 or any other authority.

Although the propriety of a dismissal “depends on the particular circumstances of the case,” in determining whether to dismiss a case involuntarily for want of prosecution, the District Court should consider the following four factors:

- (i) the degree of personal responsibility of the plaintiff;
- (ii) the amount of prejudice caused the defendant,
- (iii) the existence of a history of deliberately proceeding in a dilatory fashion, and
- (iv) the existence of a sanction less drastic than dismissal.

Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989). The foregoing factors are not meant to be applied as a rigid, formulaic test, but rather serve to assist the Court, along with the particular circumstances of each case, in determining whether dismissal is appropriate. Id. In consideration of the first factor, the Court finds no indication that anyone other than the Plaintiff is responsible for her failure to properly amend her complaint, despite being twice directed to do so.

With respect to the second and third factors, the record is unclear that the Plaintiff has a history of “deliberately proceeding in a dilatory fashion” beyond the fact that the Plaintiff has

twice failed to properly amend her complaint, and has provided no information to this Court that would allow for service to be effectuated herein. This Court has determined that “only a history of dilatory action” by a plaintiff weighs in favor of dismissal under the third factor. See Hanshaw v. Wells Fargo Bank, N.A., 2014 WL 4063828, * 4 (S.D.W.Va. Aug. 14, 2014)(Johnston, J.) (“[A]lthough the Court lacks sufficient facts to determine whether Plaintiffs’ failure to act is deliberate, in light of the absolute failure to participate in this civil action since the stay was lifted, the Court finds that [the third] factor weighs against Plaintiff.”). In short, due to the Plaintiff’s inaction, this Court is being deprived of its ability and duty to ensure these proceedings move forward to a conclusion on the merits. Thus, the undersigned finds these factors weigh against this Plaintiff.

In consideration of the fourth factor, the Court acknowledges that a dismissal under either Rule 41(b) or Local Rule 41.1 is a severe sanction against the Plaintiff that should not be invoked lightly. The particular circumstances of this case do not warrant a lesser sanction. An assessment of fines, costs, or damages against the Plaintiff would be unjust in view of the Plaintiff’s application to proceed without prepayment of fees and her status as a *pro se* litigant. Moreover, explicit warnings of dismissal would be ineffective in view of the Plaintiff’s failure to respond to the Court’s Order directing a response by the Plaintiff. In consideration of all factors, the undersigned concludes that dismissal for failure to prosecute is warranted. Accordingly, the undersigned recommends that this action be dismissed without prejudice unless the Plaintiff is able to show good cause for her failure to prosecute.

PROPOSAL AND RECOMMENDATION

Based upon the foregoing, it is therefore respectfully **PROPOSED** that the District Judge

confirm and accept the foregoing factual findings and legal conclusions and **RECOMMENDED** that the District Judge **DENY** the *Application to Proceed Without Prepayment of Fees or Costs* (ECF No. 1) and **DISMISS** this action from the Court's docket without prejudice.

The Plaintiff is hereby notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable United States District Judge Irene C. Berger. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rule 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen (14) days (filing of objections) and three (3) days (if received by mail) from the date of filing of this Findings and Recommendation within which to file with the Clerk of this Court specific written objections identifying the portions of the Findings and Recommendation to which objection is made and the basis of such objection. Extension of this time period may be granted for good cause.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties, District Judge Berger and this Magistrate Judge.

The Clerk is directed to mail a copy of this Order to the Plaintiff, who is acting *pro se*.

ENTER: July 7, 2025.



Omar J. Aboulhosn
United States Magistrate Judge